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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re RYAN W., a Person Coming Under the Juvenile  
Court Law.

C086578

SACRAMENTO COUNTY DEPARTMENT OF  
CHILD, FAMILY AND ADULT SERVICES,

(Super. Ct. No. JD236765)

Plaintiff and Respondent,

v.

W.W. et al.,

Defendants and Appellants.

W.W. (father) and S.S. (mother), parents of the minor, Ryan W., appeal from the juvenile court's orders denying their petitions to change the court's prior orders and terminating their parental rights (Welf. & Inst. Code, §§ 388 and 366.26; statutory section references that follow are to the Welfare and Institutions Code unless otherwise stated.)

Both parents contend the order terminating parental rights must be reversed because the juvenile court erred in sustaining the section 387 supplemental petition, removing the minor from their custody, and denying father's request for a continuance pursuant to section 352 for additional reunification services. Mother further contends the juvenile court abused its discretion in denying her section 388 petition.

Finding none of the claims has merit, we affirm the juvenile court's orders.

## FACTS AND PROCEEDINGS

### *Original and First Amended Dependency Petitions (§ 300)*

On December 23, 2015, the Department of Child, Family and Adult Services (Department) filed a juvenile dependency petition pursuant to section 300 alleging the minor (born in September 2015) was at risk of serious physical harm due to the historical and continuing domestic violence between the parents, occurring most recently on December 10, 2015, when mother threw a pair of scissors at father, who was holding the minor, and hit the minor in the forehead. (§ 300, subd. (a).) The petition further alleged failure to protect the minor from the parents' historical and ongoing domestic violence. (§ 300, subd. (b).)

The minor was placed in temporary protective custody on December 24, 2015. On December 31, 2015, he was detained and reunification services were ordered for the parents.

A first amended dependency petition was filed on January 26, 2016, striking the section 300, subdivision (a) allegation and adding allegations of the parents' untreated substance abuse issues and mother's mental health issues to the section 300, subdivision (b) allegation.

On April 7, 2016, the juvenile court sustained all allegations in the first amended petition with the exception of the section 300, subdivision (b) allegation of mother's untreated substance abuse problem.

On April 11, 2016, the minor was placed “on an extended visit in the home of the maternal aunt” pending a relative placement hearing.

At the April 26, 2016, placement hearing, the court ordered the minor to be placed in the home of the maternal aunt and uncle, M.H. and R.H.

Over the course of the proceedings, mother participated in individual and group domestic violence sessions, completed a mental health assessment, and attended nearly all of her parenting classes. Although mother reported she lived by herself and was no longer in a relationship with father, the caregiver reported father showed up at mother’s home several times, twice during mother’s visit with the minor. It was also reported that mother allowed father to come to her home “routinely” to help her with the minor. As a result of those reports, mother’s visits were changed to supervised.

Father’s participation in domestic violence classes was inconsistent. As of September 2016, he had attended individual counseling sessions, but had not yet begun his parenting or substance abuse classes. He claimed his full-time employment prevented him from fully engaging in services. Father attended most of his visits with the minor and was responsive to the minor’s needs. He repeatedly claimed he was no longer in a relationship with mother and had no contact with her.

The minor was doing well with his caregivers, turning to them for love and support. The caregivers expressed their willingness to adopt the minor. The Department assessed the risk of returning the minor to the parents as “high” and recommended that the minor remain with his caretakers with continued services provided to the parents.

On October 24, 2016, the juvenile court ordered continued out-of-home placement and continued services to both parents. Thereafter, the parents participated for the most part in services. Mother’s therapist opined mother would be able to manage the minor if mother remained medication compliant. Both parents admitted mother became overwhelmed when attempting to manage the minor for an extended period of time. Given father’s apparent commitment to protect the minor’s safety in the event mother

stopped taking her medication and reverted to her old behaviors, as well as his recent acknowledgment of his need to take responsibility for reunification, the Department recommended return of the minor to the parents' custody under Department supervision to ensure the parents' completion of supervised therapeutic visits with the minor and mother's continued adherence to her medication regimen.

#### *Minor Returned to Parent's Custody*

At the December 19, 2016, progress report hearing, the court ordered the 15-month-old minor to be returned to the parents' care under the Department's supervision, and further ordered the parents to comply with their case plan.

#### *Discovery of a Marijuana Grow in Parents' Home*

On March 3, 2017, the minor's 12-year-old half-sibling, E.S., woke up in the parents' home, made herself breakfast, and got herself ready for school. E.S. knocked loudly on mother's bedroom door for over an hour in an attempt to wake mother, but was unsuccessful. She then went downstairs to try to wake father, who was sleeping on the couch with his "eyes . . . wide open." When E.S. told father she needed to get to school, father replied, "I don't care." E.S. eventually texted her biological father, M.S., who came and picked her up and took her to school. According to E.S., both parents were still sleeping when she left the house.

Law enforcement went to the parents' home to conduct a welfare check. When officers arrived at the home, both mother and father were "soundly sleeping" and neither knew the whereabouts of E.S. Officers located a marijuana grow in the garage and the upstairs bathroom. Father produced an expired medical marijuana card and other paperwork for the marijuana grow.

On March 10, 2017, social workers Shelley Bald and Jasminka Rainey and dependency supervisor Isidro Ruiz went to the parents' home for a scheduled appointment. Father allowed them to search the home, including the marijuana grow in

the garage. The search revealed an “extensive” marijuana grow in the garage, with lighting, a ventilation system, and video surveillance of the front of the house and the garage which displayed on a television in the living room. Father stated the door from the house to the garage was always locked. The smell of marijuana in the home was reportedly “overwhelming” and was detectable immediately upon entering the front door. Although father stated he had only 12 plants growing, staff discovered approximately 24 marijuana plants growing in the garage. Father stated he had “a couple smaller plants” in the master bathroom upstairs but had moved them into the garage. Both parents admitted their medical marijuana cards were expired.

Father claimed all the marijuana was for personal consumption; however, Bald and Ruiz told father the extent of the grow appeared to be for sales and not just personal use. Father repeated that he enjoyed cultivating for his own personal use. Bald asked the parents where their personal marijuana stash was kept. Mother initially stated she did not believe she had any marijuana to smoke in the house and both parents claimed they “hardly ever” smoked and always smoked outside. When Bald commented on the strong smell of marijuana in the home and stated her concern about having the minor around such a strong odor, the parents stated they “only smoke once a week” and did not believe they had any marijuana left. Eventually, however, father retrieved a gallon-sized freezer bag which was approximately three-quarters full of marijuana. Ruiz also found a glass smoking pipe in the master bedroom closet.

While the parents stated they were not aware they needed to disclose the marijuana grow and claimed the Department was already aware of it, social worker Rainey denied having any knowledge of it. Bald, Rainey, and Ruiz explained their concern over the parents’ ability to parent the minor and his sibling while using a substance, the minor’s access to the marijuana grow, and the fact that sale of the marijuana would mean people were coming to and going from the home and would know

there was a significant amount of money and marijuana in the home. The parents again denied selling the marijuana and claimed all the plants were for personal use.

Social worker Rainey directed both parents to drug test on March 10, 2017, and they agreed to do so. On March 13, 2017, Rainey reported the parents failed to test as directed. The following day, mother reported that she and father destroyed the marijuana grow. When asked whether the parents had drug tested, mother said they had not because they did not want to test positive for marijuana without having a valid medicinal marijuana card. Bald informed mother it was more important to test and informed her a missed test was deemed a presumptive positive, and again instructed the parents to drug test that day. Mother stated she and father would find a way to do so.

On March 15, 2017, Ruiz and Rainey made an unannounced visit to the parents' home to verify that the marijuana plants had been removed. No one answered the door. Rainey called father, who stated he was picking E.S. up from school and would not return home for another hour. Father also stated that, while he and mother had destroyed the plants, he was hesitant to allow Rainey and Ruiz inspect the garage because it was in disarray. When asked whether he and mother had drug tested as instructed, father became argumentative and stated they would not drug test until they obtained a valid medicinal marijuana card and received legal advice from their attorneys. Father also disagreed that a missed test was considered a presumptive positive test.

#### *Supplemental Dependency Petition (§ 387)*

On March 17, 2017, just three months after returning the minor to parents' care, the Department filed a supplemental dependency petition pursuant to section 387 based on allegations related to the March 3, 2017, welfare check by law enforcement officers and discovery of the marijuana grow. The supplemental petition alleged that, due to the parents' actions of growing and smoking marijuana, the previous disposition had not been effective in the protection or rehabilitation of the minor.

At the March 23, 2017, detention hearing, notwithstanding the Department's recommendation that the minor be removed and placed with his prior caregivers, and despite the court's finding that the minor came within the provisions of sections 300 and 387, the court ordered that the minor remain in the parents' home under Departmental supervision. The court ordered the Department to continue to provide family maintenance services to the parents without prejudice to further Departmental recommendations.

*March 29, 2017, Domestic Violence Incident*

According to the status review report, a domestic violence incident occurred between the parents on March 29, 2017. The incident began with an argument between the parents. Mother took the minor to the maternal great uncle's home before returning home and arguing with father. During the argument, father grabbed the car keys from mother and walked out of the house. Mother followed and jumped on the hood of father's car. When father continued to back the car out, he ran over mother's foot. After father left, mother contacted law enforcement and would not allow father back into the home. Mother later reported father hit her and slashed her car tires. Father blamed the incident on the fact that mother "is Bi-polar." A subsequent police report noted mother's statement that, during the domestic violence incident, father grabbed her by the hair and pulled her forward into the television, then pulled her backward until she fell on the floor.

Mother felt she followed the safety plan because, prior to the domestic violence incident, she "felt like something was going to happen" and made arrangements for the minor to be cared for by the maternal aunt and uncle. Mother stated father had a gambling problem and when he returned home after being away for two days, the two got into an argument. Mother claimed father attempted to hit her with his vehicle.

Father also felt he followed the safety plan because the minor was not present during the incident and the social worker and the parents' therapist were contacted after

the incident. He stated he was no longer in a relationship with mother and he believed mother was not taking medication to treat her mental health issues. He stated that, while mother was easy to get along with when medication compliant, she swore a lot, was unable to calm herself down, and became verbally abusive when not compliant. Father noted the March 29, 2017, domestic violence incident was “the same scenario as what happened in approximately 2015.”

Regarding the March 29, 2017, discovery of the marijuana grow, father claimed E.S. never tried to wake up either parent after mother’s alarm failed to go off. Father explained that he and mother had been growing marijuana for personal use since they moved into the home and claimed the Department was aware of the grow. The garage was locked and the minor and his half sibling did not have access, and the air filtration system filtered out the smell. Although there were approximately 23 plants growing, those plants were immature and he would typically only be able to harvest approximately one pound of marijuana from the plants grown. Father admitted he did not have a current physician’s recommendation for medical marijuana use but stated he did not believe he needed one because of the recent legalization of marijuana. He claimed the gallon-sized bag of marijuana found in the home was the “trimmings (the throw away stuff)” from 12 mature plants and not actually marijuana he would smoke. According to father, the video surveillance system was to keep mother’s ex-husband away from the house.

In the meantime, the minor was doing well with the maternal aunt and uncle, where he remained pursuant to the parents’ voluntary agreement. Visitation was arranged in the caregivers’ home and supervised by the caregivers. The maternal aunt reported mother struggled during visits and appeared to be anxious, disorganized, and unsure of herself. She struggled to respond to the minor’s cues, had a difficult time engaging in play with the minor, and sought help from the caregivers. Her anxiety appeared to affect the minor’s mood and behavior, causing him to become anxious and fussy and to seek reassurance from the caregivers. On the other hand, father interacted

well with the minor. He appeared confident in his parenting skills, was responsive to the minor's needs, was affectionate with the minor, and engaged in play with the minor. The minor appeared affectionate and trusting of father.

Mother was reportedly participating in services and had completed the domestic violence program. She appeared remorseful for the behavior that led to removal of the minor from her care. She completed a mental health examination on January 15, 2016, but was not taking her psychotropic medication for her bipolar disorder and had "de-compensated." However, she attended individual counseling regularly and appeared to embrace therapy and had reportedly been consistent with her prescribed medication since May 2016. Father was also participating in services, including domestic violence group counseling. However, he had yet to complete a drug test as of May 1, 2017.

Prior to return of the minor to the parents' custody on December 19, 2016, the parents participated in conjoint counseling and supervised therapeutic visitation with the minor. However, between December 19, 2016 and March 10, 2017, when the marijuana grow was discovered in their home, the parents had not attended any of the remaining counseling sessions. Thereafter, the parents completed one conjoint counseling session, and mother attended one individual counseling session with Dr. Jackie Nelson. On April 7, 2017, Dr. Nelson reported her concern about mother's ability to care for the minor on her own due to mother's disclosure that she could only care for the minor for two to three hours before becoming overwhelmed and having to ask for help. Dr. Nelson was also concerned mother was becoming increasingly unstable after having lost the support of the maternal grandmother, who was paying mother's rent and otherwise providing financial support to mother. Mother also threatened to take the minor to Idaho to avoid the Department, and to take the minor to a shelter to keep father from taking the minor from mother.

Mother reported to social worker Rainey that her relationship with father had been troubled since before the minor was returned to the parents' custody in December 2016.

Father had been verbally abusing her, calling her crazy, and making fun of her bipolar disorder. Mother stated she did not feel safe around father and no longer wished to have a relationship with him. She told Rainey she previously withheld this information from the Department for fear she would lose custody of the minor. Mother also informed Rainey that, in addition to being “stressed out” about the current Department investigation, she had lost custody of the minor’s half sibling, E.S., following the March 29, 2017, domestic violence incident and was only allowed supervised visits with E.S. if she could pay for the supervision. Mother stated she would ideally like to move in with the maternal aunt and uncle so they could help care for the minor while mother worked and attended school. Rainey noted the maternal aunt and uncle reported they were unable to have mother reside with them.

Father reported mother could not handle stress, frequently acted manic, and was constantly instigating fights. He also stated mother could not care for the minor herself and often asked the maternal aunt and uncle to care for him when father was not around. He claimed mother’s mental health deteriorated after the March 29, 2017, domestic violence incident, and further escalated when she lost custody of E.S. Father was confident he could care for the minor on his own but needed stable, secure housing first.

An April 2017 memorandum informed the court that the parents stopped attending family counseling after the minor was returned to their custody in December 2016. Mother appeared to be out of compliance with her psychotropic medication regimen. She was using THC in combination with her psychotropic medication and had been exhibiting increasing instability. Both parents were reportedly homeless after being evicted from their home due to discovery of the marijuana grow. Mother was living in her car and father had reportedly moved to Southern California to live with family. The parents did not appear to have benefited or learned from the services they previously completed.

An addendum report filed May 8, 2017, urged the court to terminate reunification services to the parents given that the minor was under three years of age and the parents

were only entitled to six months of services from and after December 24, 2015, the date of removal. The Department asserted the parents had received 14 months of services but had not made significant progress in resolving the problems that led to the minor's removal.

*First Amended Supplemental Dependency Petition (§ 387)*

On June 19, 2017, the Department filed a first amended supplemental petition alleging the previous disposition had not been effective in the protection or rehabilitation of the minor as evidenced by the March 2017 discovery of the marijuana grow in the parents' home after E.S.'s unsuccessful attempts to wake both parents, the resulting eviction of the parents from their home and mother's homelessness, the parents' failure to drug test as directed, and the March 29, 2017, domestic violence incident.

An addendum report filed July 12, 2017, stated father was inconsistent with visits, missed some scheduled visits and occasionally showed up outside of the scheduled time for visits. The caregivers reported father visited more frequently than mother and was better with the minor, who appeared calmer around father. Father was described as loving and attentive during visits; however, the caregivers were concerned father might be using illicit drugs as his moods appeared to change during visits and he appeared "amped up and energetic." Mother was very inconsistent with visits and appeared to be unsure of herself around the minor. She frequently asked for help identifying the minor's needs and how to meet those needs. The minor appeared uneasy around mother as well. He frequently sought reassurance from the caregivers when mother was around and preferred that the caregivers soothe him when he became upset. The caregivers were also concerned mother might be noncompliant with her medication and using illicit drugs, noting mother's behaviors were inconsistent and she more often than not appeared restless, irritable, and agitated and looked unkempt and disheveled.

It was also reported that neither parent had completed an intake or drug test as of May 31, 2017. Rainey attempted to contact father via text on June 2, 2017, to provide information regarding new referrals for services. Father indicated he was confused given the Department's recommendation to terminate services. Rainey encouraged father to engage in services in order to reunify with the minor, and father stated he would do so. Rainey's attempt to contact mother was unsuccessful. Rainey reportedly submitted referrals for services for both parents, including individual counseling, anger management, and domestic violence.

Rainey contacted mother on June 5, 2017, at which time mother stated she did not have a working telephone and was just court-ordered to drug test. Rainey informed mother there was an open referral for her to drug test at Strategies for Change, but mother inquired about testing with Specialized Treatment and Recovery Services (STARS) instead. Rainey instructed mother to complete an alcohol and other drug (AOD) assessment at STARS. Mother agreed to do so and to contact Rainey thereafter to further discuss services.

After unsuccessfully attempting to contact the parents on June 15, 2017, Rainey learned mother completed an intake with Strategies for Change on June 9, 2017, and tested negative for all substances that day and again on June 15, 2017.

Dr. Nelson reported she had only seen mother once after the last domestic violence incident. Mother was not doing well and appeared very unstable, indicating she either did not understand the court proceedings or was "in serious denial." Dr. Nelson also reported that on June 22, 2017, father had his first appointment since the domestic violence incident.

Dr. Nelson reported that, although the parents were separately attending individual counseling, she believed they were still in a relationship because father referred to them as "us." Father denied he and mother were together, but stated he remained in contact with her in order to co-parent the minor. Both parents expressed to Dr. Nelson that they

did not feel they had to participate in any services as they had not been ordered to do so by the court. Both parents appeared to be under the impression that the charges related to the marijuana grow had been dropped and they were allowed to resume their use of marijuana. Mother appeared disheveled and dirty and both parents appeared to be in denial regarding the dependency proceedings, believing the minor would be returned to their care at the upcoming pretrial hearing.

The caregivers reported the parents were only visiting the minor twice a week despite that the caregivers had arranged for four visits per week for each parent. The caregivers also reported supervising visits between the parents and the minor were becoming increasingly difficult and disruptive because the parents failed to adhere to their visitation schedule and frequently called to reschedule. The caregivers stated it was unclear whether mother and father were romantically involved or living together because father disclosed he and mother communicated and helped each other with transportation and they came to one of the visits together. Mother continued to appear unstable during visits, seemingly preoccupied with her own problems rather than focusing her attention to the minor. When the caregivers attempted to redirect mother, she became defensive and combative. Mother continued to struggle with occupying and soothing the minor and continued to depend on the caregivers' help.

As of June 29, 2017, mother had visited the minor sporadically once or twice a week, and father visited once a week. Visits had been reduced to weekends due to the parents' inconsistent attendance. Mother provided a clean but undated drug test and mother was still participating in individual counseling at Strategies for Change. However, father had not drug tested and Rainey had no further updates regarding father's participation in services.

The August 2017 addendum report stated social worker Saechao spoke with mother on July 12, 2017, to attempt to schedule an appointment to complete an assessment of mother's home. Mother agreed to meet Saechao at her home on July 24,

2017, but did not know the physical address. Saechao again contacted mother on July 13, 2017, to obtain mother's address. Mother refused to give Saechao the address, stating her roommate did not feel comfortable with CPS visiting the home. Mother also indicated she would be moving out of the home and would soon be homeless. Saechao referred mother to Rainey and instructed her to contact 211 for information regarding homeless shelters. Mother cancelled the appointment scheduled for July 24, 2017.

On July 27, 2017, mother informed Saechao she was homeless and "couch surfing." She reported she had been testing negative for all substances, she was signed up for domestic violence classes, and she was scheduled to complete her anger management intake at Terra Nova Counseling the following day. Mother stated Rainey advised her that, because she wanted to complete domestic violence services individually rather in a group setting, she would not be able to participate in individual domestic violence counseling through Strategies for Change with Dr. Nelson.

Saechao completed an assessment of father's home and determined it to be adequate for the minor. Father had not participated in any services other than individual counseling since March 2017, explaining he was focused on working and getting his own residence. He noted he previously participated in individual counseling, a domestic violence program, and conjoint counseling. He completed an AOD assessment, claiming it concluded he did not need to participate in any substance abuse services. Father confirmed he had not completed any drug tests due to his work schedule. He stated he did not want to start drug testing because he would then be required to continuously test and could potentially have a presumptive positive test if he were to miss a test due to work. He did, however, agree to test once if not twice prior to his next scheduled visit with the minor. Saechao sent father a drug testing referral on August 2, 2017, instructing him to drug test the next day.

Father continued to deny any current romantic relationship with mother. He also denied that the first domestic violence incident in 2015 was in fact domestic violence. He

claimed mother was manic at the time. He also claimed he had no domestic violence issues in his past and denied his 2011 conviction for battery of his ex-girlfriend was the result of domestic violence. As for the March 2017 incident with mother, father claimed he and mother followed the safety plan by removing the minor. He eventually admitted he could have avoided the incident by leaving instead of engaging with mother.

Dr. Nelson reported mother was consistently attending individual counseling, but either refused to acknowledge or minimized the 2015 domestic violence incident that initially brought the family to the Department's attention. Father was focused more on working and maintaining housing than on participating in services. He continued to deny the March 2017 domestic violence incident, stating he and mother followed the safety plan. Dr. Nelson observed the parents' interaction with the minor, noting the parents undoubtedly loved the minor but the minor nonetheless appeared anxious around the parents.

The parents met with Rainey, Ruiz, and Dr. Nelson on July 24, 2017. Mother stated she was still homeless and living out of her car and was working part-time, although she was confused and not forthcoming about her work schedule. Father provided information on mother's behalf but could not explain how he knew mother's employment information when the two were not living together. Mother had not maintained consistent contact with Rainey, but admitted having received information regarding services on June 15, 2017. She did not appear to understand why she needed to maintain contact with Rainey as opposed to Dr. Nelson, with whom she comfortably communicated. Both parents reportedly appeared aloof regarding their responsibility to maintain contact with the Department and complete their respective services. Mother argued she successfully completed all of her services and should not be required to repeat them given that she was able to demonstrate her ability to protect the minor and follow the safety plan. She further argued that she could participate in all of her classes through Dr. Nelson and, since the referrals for services was not submitted until June 2, 2017, she

felt there was no urgency to participate. She further argued her work schedule and her homelessness prevented her from engaging in services and stated her counsel had advised her not to engage in the anger management program.

Mother reported she no longer met with her mental health therapist, Dennis Galvin at Folsom Psychiatry Associates, because he retired, but she continued to receive medication management through that facility. She claimed she was medication compliant.

Father reported he was living in Grass Valley and was employed at a landscaping company. He too argued he should not have to participate in domestic violence or anger management classes as he already successfully completed those services. He again denied any domestic violence between himself and mother on March 29, 2017, stating they merely argued and yelled at one another. Father noted he did not slash mother's tires as previously reported; he merely let the air out of her tires to prevent her from following him. While he acknowledged Rainey submitted a referral for services on June 2, 2017, he stated he did not contact the service providers because he believed the case would be dismissed and the minor would be returned to his care so there was no need to engage in services.

Dr. Nelson received the referral for individual counseling for the parents on June 5, 2017, and had already completed six individual counseling sessions with mother, with whom she had frequent telephone contact. Dr. Nelson counseled mother to engage in other recommended services. Father had only attended three individual counseling sessions and had not yet completed the anger management intake process.

Both parents denied being in a relationship. Mother became defensive when questioned about her current whereabouts and the proximity to father. Dr. Nelson suspected that the parents might be carrying on a relationship despite their denials, noting they frequently referred to each other as "us" or "we." The parents also continued to deny the allegations leading to removal of the minor and blamed the Department for their

misfortunes. They again claimed the marijuana grow was inconsequential as CPS was aware of the marijuana grow since the Department's involvement in November 2015.

Mother last drug tested negative for all substances on August 1, 2017. Father had not yet drug tested. Father claimed he could not drug test as requested because of his work schedule.

Dr. Nelson reported her concern about mother's ability to parent the minor independently, noting mother's mental health appeared "unstable." Mother appeared to have poor memory, lacked abstract reasoning, and appeared to have limited ability to comprehend simple concepts. She also exhibited a decreased ability to comprehend. Dr. Nelson reported mother denied domestic violence and drug use had an impact on the case and failed to take ownership of her problems, blaming others for her circumstances. Mother had no support network and her unpredictable behaviors alienated her from her relatives. She also appeared to have unrealistic expectations regarding the outcome of the dependency case. She did not believe she was required to show CPS where she lived and she felt an assessment of her living conditions was unnecessary because the minor would be returned to her at the next hearing and the Department would "no longer have the ability to interfere" in her life. Dr. Nelson observed the minor was anxious around mother and sought comfort from father.

Dr. Nelson opined that father appeared slightly more stable than mother, but had still not accepted ownership of the problems that led to CPS involvement. Father continued to deny any domestic violence against mother. Dr. Nelson was also concerned about father's support network, noting that while father indicated he received financial help from the paternal grandmother in southern California, he did not have help with childcare. Father stated the paternal grandfather, who lived in Sacramento, could provide support but not until closure of the CPS case, as the paternal grandfather wanted no involvement or contact with CPS. Dr. Nelson also had concerns that the paternal uncle, who lived with the paternal grandfather, had a criminal history. Dr. Nelson stated father

had unrealistic expectations about parenting the minor, as he either lacked insight into what it takes to secure childcare or he secretly planned to involve mother in caring for the minor.

An addendum report filed August 24, 2017, stated father drug tested negative for all substances on August 10, 2017.

### *Contested Section 387 Hearing*

The contested section 387 hearing commenced on August 30, 2017.

#### Dr. Jackie Nelson

Dr. Nelson testified she provided individual therapy for each parent and also provided co-parenting and conjoint therapy and supervised therapeutic visitation between the parents and the minor. Dr. Nelson noted that when mother became manic or overwhelmed or reacted based on her emotional state, domestic violence incidents occurred between the parents. It appeared to Dr. Nelson that, for a period of several weeks in March or April of 2017, mother was not medication compliant, as demonstrated by mother's difficulty regulating her emotions and staying on topic, her appearance, and her mood. However, since March or April 2017, mother appeared more stable and independent and more able to regulate her mood. Dr. Nelson noted mother had been able to secure employment, purchase a car, and had attempted to secure housing.

After completing individual counseling and domestic violence counseling with Dr. Nelson, mother failed to take responsibility for the domestic violence she participated in and failed to understand the impact the domestic violence and her drug use had on the minor. Father was unable to identify his part in the domestic violence or how he antagonized mother and initiated arguments. Neither parent revealed to Dr. Nelson that they were growing marijuana in the home.

When asked whether there were any additional services Dr. Nelson could recommend for the parents, Dr. Nelson stated there were none because the parents had

already utilized all of the recommended services. Her only recommendation was that the parents have no contact with one another so soon after the domestic violence incident and should have no contact when the minor was present other than appropriate communication regarding the co-parenting of the minor.

Dr. Nelson expressed an overarching concern regarding the possibility of the parents reuniting in the future, given the parents' history of domestic violence and their pattern of separating and then reuniting. While the parents denied being together, their behavior in the July 24, 2017, meeting with Rainey, Ruiz, and Dr. Nelson suggested otherwise.

Mother recently informed Dr. Nelson she had stopped using marijuana for pain management after the marijuana grow was discovered and destroyed. A week or so after the marijuana was destroyed, mother appeared to be in significant pain. Mother stated she was able to manage the pain without using marijuana, but she told Dr. Nelson she had concerns that the prescription pain medication had a high level of addiction and tended to make her drowsy and "out of it," meaning she was not able to pay attention to the minor.

Dr. Nelson testified that, during the six visitation sessions she supervised between the minor and the parents, the minor was "[l]ike a deer in [the] headlights." He was very quiet and "not comfortable," lacking response as he observed his environment. Throughout all six sessions, the minor presented high anxiety and had a very flat affect and very little emotional expression. He did not display an emotional connection with nor a need or reliance on his parents.

#### Jayde Danielson, Visitation Supervisor

Jayde Danielson testified she supervised visitation between the minor and each parent separately twice weekly for two hours. She described the minor as "easygoing, independent, kind" and "a good boy." Mother's visitation with the minor was consistent. The minor appeared happy to see mother, who was always very enthusiastic, running up

to the minor and hugging and kissing him. The minor had no difficulty separating from mother at the end of the visits. Danielson had no safety concerns with regard to mother's visits with the minor.

Danielson stated visits between the minor and father went well. Father was nurturing and responded appropriately to the minor's needs. She noted father missed approximately four visits.

Jasminka Rainey, Social Worker

Jasminka Rainey testified she was first assigned as the social worker in the minor's case in March 2016. During the July 24, 2017, meeting attended by Rainey, Ruiz, Dr. Nelson, and the parents to discuss the parents' participation in services, the parents stated they did not feel they needed to complete the recommended services because they felt they were already done with services and the court would be making a decision to return the minor to their custody. Rainey referred the parents to services as set forth in their case plan and then re-referred them to those services on June 2, 2017. The second case plan was recommended following the discovery of the marijuana grow in March 2017 wherein it was recommended that the parents re-engage in anger management, domestic violence, individual counseling, and AOD assessment and treatment. When the parents learned about the recommendation to re-engage, father was confused but stated he was willing to do whatever it took to reunify with the minor. Mother took some time to acknowledge receipt of the service referral. It was not until the July 24, 2017, meeting with Dr. Nelson that it was discussed why it was important that she re-engage. Rainey noted, however, that there were telephone conversations and text messages exchanged wherein Rainey told mother, "Look, you may not believe that this is something that you need to do right now, but it is always in your best interests if you engage in the services that are recommended by the Department." Mother stated more than once that she had been advised by her attorney that she did not have to engage in

services because she had already completed them and the minor should be returned to her care.

Rainey testified she did not know about the marijuana grow in the parents' home until it was discovered in March 2017. Based on Rainey's experience with mother, Rainey believed that mother's mental health would continue to be an issue and that consistent and aggressive treatment would be important for mother to function properly, interact with others, and parent the minor. Rainey opined that mother's mental health would continue to be a concern in terms of mother's ability to independently care for the minor because, even when mother adhered to her medication regimen and participated in counseling, her mental health continued to be unstable and was greatly affected by life circumstances. Rainey noted mother became easily overwhelmed and, because of her mental health issues, had a tendency to not always perceive her support network as supportive, often resulting in conflict with those who were there to support her. As a result, when mother's mental health was unstable and she became verbally aggressive and accusatory and rejected criticism, advice, and help, her support network tended to diminish. Mother often became overwhelmed in situations that would be considered normal to others, and she reacted to people in a negative way, becoming aggressive and not receptive to their support.

Rainey noted the parents did not complete the therapeutic supervised visits with Dr. Nelson as recommended in the initial case plan. She stated she did not believe the parents would benefit from repeating services or completing the missing component. Rainey noted that, in the past, mother had not been transparent about her relationship with father, that he was living in the home with her, and that he was seeing the minor during mother's unsupervised overnight visits. Since the March 2017 domestic violence incident, both parents independently reported to Rainey by telephone and accused each other of engaging in excessive arguing and conflict and stated they had experienced

ongoing problems from the time the minor was returned to their care in December 2016 until the domestic violence incident in March 2017.

Rainey acknowledged that, at the initial hearing on March 23, 2017, the court ordered the Department to provide family maintenance services to the parents without prejudice. She explained the delay in referring the parents to services was due to her absence for some time due to personal reasons. However, she referred the parents to services on June 2, 2017, and they failed to engage in domestic violence and anger management services until the end of July 2017.

Although Rainey did not meet face-to-face with father from May 2017 until July 2017, there were other social workers who met with him, or attempted to meet with him, during that period. Prior to and during the July 24, 2017, family meeting, Rainey discussed with father the services to which he was referred. Rainey re-referred father to individual counseling with Dr. Nelson, the same therapist to which he was initially referred, because she was required to refer him to services. Although it was Rainey's opinion that the parents would not benefit from repeating services, she referred him to Dr. Nelson because there had been difficulty in the past in communicating with the parents and Dr. Nelson "remains one person who has been able to work with them, and she remains a person who both parents respond to and accept her support." Since referring father to domestic violence and anger management on June 2, 2017, father completed an intake in August 2017 but subsequently missed two sessions and was discharged.

Rainey continued to have concerns about the parents' ability to parent the minor. Among other things, Rainey was concerned about mother's mental health issues and her ability to manage her symptoms, the communication problems between the parents, and mother's accusations of father's verbal abuse.

### Mother

Mother testified she had been living in a hotel for the past few weeks but was actively looking for permanent housing. As of the date of the hearing, mother had completed three domestic violence sessions, six anger management sessions, and individual counseling with Dr. Nelson. She was drug testing weekly. Mother stated she stopped using marijuana for pain management in March 2017. However, she admitted she refused to take prescription pain medication and was suffering pain at the time of the hearing.

Mother believed Proposition 215 allowed her to grow as much marijuana as needed for personal pain, and Proposition 420 only limited her to 12 immature plants, six mature plants, and one pound of usable marijuana. She and father had the marijuana grow in their home for “years.” She stated the marijuana grow was safe, the garage was always locked, and the house was child-proofed with baby gates and cabinet door locks. Mother stated the minor never went into the garage on his own.

### Isidro Ruiz, Supervising Social Worker

Isidro Ruiz testified that he and Rainey participated in a visit to parents’ home on March 10, 2017. At that time, he observed the parents’ house and garage, including the marijuana grow. Ruiz did not see any child safety devices on the door from the house to the garage. He could smell marijuana from the interior of the house.

### Stipulation by the Parties

The parties stipulated as follows: The Department was aware, on January 26, 2016, that mother had a tent with marijuana growing in her house. The minor was taken from the home. The Department did not know if it told mother at that time that growing marijuana in the house was inappropriate. The Department was unaware of the marijuana grow in the garage until its discovery in March 2017.

*Juvenile Court's September 15, 2017 Ruling*

On September 15, 2017, the court issued its ruling sustaining the allegations in the section 387 supplemental petition and ordering the minor removed from the parents. Finding there was no good cause to continue services beyond the 18-month period already provided to the parents, the court terminated services and set the matter for a section 366.26 hearing. In particular, the court found as follows: "Given the parents' demonstrated lack of understanding of their relationship and its connection with domestic violence, given their lack of understanding of the impact of domestic violence on children, and hence, any substantial motivation to avoid the triggers of domestic violence, and given their continued embroilment in each other's lives, . . . there is clear and convincing evidence that there is substantial danger to the child's physical health, safety, protection and emotional well-being or would be if the child were returned or not removed from the parents, and there are no reasonable [means] at this point by which the child's well-being can be protected without removing the child from the parents' physical custody." The court further found that "the sustained marijuana allegation previously discussed adds to the Court's finding that removal is appropriate in this case." The court noted that, given the passage of more than 18 months since the minor's removal, the parents were "timed out" from reunification services and there was no good cause pursuant to section 352, subdivision (a) to continue such services.

Both parents filed petitions for extraordinary writ relief challenging the juvenile court's September 15, 2017, dispositional order sustaining the supplemental petition, removing the minor from the parents' care and custody, and denying father's request to continue the matter pursuant to section 352. This court denied the petitions on the merits. (*Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1513-1514.)

### *Selection and Implementation Report*

The January 2018 selection and implementation report stated father's attendance at visits with the minor had been inconsistent since September 2017, including tardiness, missed visits, and failure to show up or call ahead. Father's twice-weekly visits were reduced to once a week in October 2017. Additionally, due to the hostile nature of text messages from father to Danielson, father's visits were changed from observed visits in the community to observed visits at the CPS office. It was also reported that father had unauthorized contact with the minor when the caregiver took the minor to the emergency room for an ear infection.

In October 2017, mother's visitation was reduced to once weekly due to mother's numerous cancellations. Mother reported that, during an October 15, 2017, she received a "nasty" e-mail from father about father's visitation schedule. Mother also told the family service worker that she would commit suicide if the minor were adopted by someone other than the caregivers.

The report stated the minor appeared happy, comfortable, and playful with the maternal aunt and uncle, with whom he had previously been placed and with whom he was placed on March 28, 2017. He sought comfort from them despite that he did not refer to them as "mom" and "dad." The Department assessed the minor as generally adoptable.

The Department noted that, while the parents' visits with the minor had been appropriate and positive at times, the parents had yet to demonstrate their mitigation of the issues that led to the minor's removal.

### *Father's Section 388 Petition*

On January 17, 2018, father filed a section 388 petition seeking to change the court's order terminating reunification services and setting the section 366.26 hearing. The petition argued the minor was closely bonded to father and called him "dad" during

visits, and father loved the minor dearly and believed it was in the minor's best interest to be reunified with father. The petition asserted that, since the court's order, father remained employed and lived separately from mother; father was not in a relationship with mother or anyone else so there was no risk of domestic violence; father was focused on maintaining his sobriety; father visited the minor as frequently as possible given his work schedule; father was participating in services through an online wellness education program which offers programs including domestic violence, anger management, and parenting 101; and father was a Marine Corps veteran and therefore had the stability to provide for the minor.

#### *Mother's Section 388 Petition*

On January 30, 2018, mother filed a section 388 petition seeking to change the court's order terminating reunification services and setting the section 366.26 hearing. The petition argued that, since the court's order, mother continued to make significant progress in addressing the issues that led to the minor's removal. For example, mother voluntarily paid for and satisfactorily completed additional courses in anger management and domestic violence; mother continued to manage her pain without the use of marijuana; an evaluation of mother on January 15, 2018, concluded mother did not have a substance abuse problem; mother demonstrated good job stability; mother procured safe and appropriate housing that was suitable for the minor; mother continued weekly visits with the minor, who responded positively to her and enjoyed his time with her; and mother demonstrated good parenting skills and interacted appropriately with the minor during visits.

#### *Informational Memorandum to Court*

On February 2, 2018, the Department sent an informational memorandum to the court responding to the parents' respective section 388 petitions. The Department reiterated its previous arguments that, despite having received reunification services to

address issues of domestic violence, substance abuse, and mental health instability, and family maintenance services after the minor was returned to the parents' care and custody, the parents failed to show they benefitted from those services and continued to engage in domestic violence, along with growing and cultivating marijuana for personal use. Following discovery of the marijuana grow, the parents failed to drug test as directed.

According to the memorandum, the social worker met with father on January 29, 2018, to inquire about when father first engaged in the online wellness program services. Father could not recall the date but stated it was sometime in the month prior. Father stated he would not obtain documentation to verify his participation until he completed the remainder of the courses. When asked what he had learned from services so far, father stated he "learned a lot" but could not give specific details or examples of what he learned. Father stated he learned to accept what was happening, not blame others, and accept the case was partially his fault. He stated he was ignorant about mental health and noted it was difficult to deal with a person with a bipolar diagnosis. Regarding the domestic violence issue, father stated he was not perfect in how he behaved and regretted some of his actions, but that he tried to do the right thing and did not know how to deal with mental illness.

The social worker was unable to reach mother by telephone despite several attempts. The Department noted that, while it appreciated the parents' reported efforts to address issues that led to the minor's removal, their past history outweighed their present efforts. The Department also argued that, while visits had been appropriate overall when the parents did attend, both parents had been inconsistent in attending visits. Following visits, the minor was able to successfully transition back to his placement where he had been living on and off since April 2016. The minor appeared happy with and bonded to his caregivers and sought them out when he needed help or comfort. The caregivers were reportedly committed to providing permanency through adoption.

*Hearing on Section 388 Petitions / Section 366.26 Contested Hearing*

The hearing on the parents' section 388 petitions and the contested section 366.26 hearing commenced over the course of several days beginning on February 5, 2018.

M.H. (Maternal Aunt), Minor's Caretaker

M.H. testified she and her husband, R.H., had been the minor's caretakers since March 2017 and had previously cared for the minor prior to his return to the parents' custody in December 2016. M.H. confirmed that she and her husband were fully committed to adopting the minor if he were not returned to the parents' custody, and that they loved the minor and considered him family. M.H. stated she and R.H. were not interested in guardianship because the minor needed stability through adoption if not returned to his parents.

Oleg Serebrennikov, Visitation Supervisor

Oleg Serebrennikov testified he supervised approximately five visits between mother and the minor, and slightly more between father and the minor. The minor reacted the same way toward mother and father as he did around anyone else and separated from the parents easily at the end of the visits. Serebrennikov did not recall the minor speaking much around father or speaking at all around mother.

Yuchin Unice Lee, Social Worker

Social worker Yuchin Unice Lee testified she observed interactions between the minor and his caregivers, M.H. and R.H., in the caregivers' home. The caregivers were very affectionate and loving toward the minor. The minor sought out the caregivers for help and comfort. Lee testified the caregivers appeared to have a positive bond with the minor.

### Father

Father testified he was employed full-time and was living separately from mother. He denied being in a romantic relationship with mother or anyone else. He stated he was clean and sober but had not been able to drug test since the court's ruling on September 15, 2017. Father's visitation schedule with the minor was one hour weekly at the CPS offices. According to father, the minor appeared happy to see him and had been calling him "Da" or "Dadda" for several months.

Father stated he was always willing and able to do classes and services to "further my education" to be a better father to the minor and gain some insight into the mistakes he made. Father was in the Marine Corps from 2000 to 2004. He believed that taught him core values he tried to live by and hoped to share with the minor.

### Mother

Mother testified she completed a psychosocial evaluation on January 15, 2018. She stated she was drug-free and medication compliant for her bipolar diagnosis. Mother completed an AOD assessment and learned how the brain functions on different types of drugs and how drugs and domestic violence coexist. She learned drugs and alcohol can cause domestic violence and that the use of drugs and alcohol is connected to a person's irritability and stress level. She denied using marijuana caused her to be irritable. Mother testified she stopped using marijuana after the marijuana grow was discovered. She felt like she had more energy and was not as tired as when she was using marijuana. She also stated she was not in as much pain.

Mother took classes that were not CPS-approved and paid for them with her own money. She took an anger management class and learned how stress was connected to anger and how to manage stress. She stated the most stressful thing in her life was not having her children. She managed the stress by breathing and praying. Mother stated she learned to identify escalating situations but could not give an example of an escalating

situation in her own life other than customers at work. She explained she had to give them what they want and then walk away.

Mother took a batterer's intervention program, a 13-session course, to get a different perspective on domestic violence. She learned every relationship must have a "circle of equality" where both people treat each other equally and have equal decision-making power and financial equality. She also learned the different types of abuse and how to recognize red flags in relationships. Mother denied being in an abusive relationship or being a victim of domestic violence. She felt the alleged domestic violence in her case was the result of her failure to be medically compliant.

Mother testified she had been living by herself in a two-bedroom apartment since October 2017. She denied being in a relationship with father or anyone else. She believed she would be able to care for the minor and work 40-plus hours per week. Mother drug tested negative for all substances on February 5, 2018. She visited with the minor once monthly beginning January 8, 2018. Prior to that, her visitation schedule was once weekly.

#### Juvenile Court Ruling on Sections 388 and 366.26

On February 14, 2018, the court denied both parents' section 388 petitions, finding there had been no change in circumstances and it was not in the minor's best interest to grant such petitions. The court found the minor generally adoptable based in large part on the caretakers' strong commitment to adoption. Finding the beneficial parental relationship exception did not apply, the court terminated parental rights.

## DISCUSSION

### I

#### *Section 387 Petition*

The parents contend the juvenile court erred in sustaining the section 387 supplemental petition. They assert there was insufficient evidence that the minor's previous disposition was not effective or that there was a current risk to the minor based on the March 2017 domestic violence incident. They further assert the court abused its discretion by denying father's request to continue the disposition hearing on the supplemental petition pursuant to section 352. The claims lack merit.

“A section 387 supplemental petition is used to change the placement of a dependent child from the physical custody of a parent to a more restrictive level of court-ordered care. (§ 387; Cal. Rules of Court, rule 5.560(c).) In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been ineffective in protecting the child. (§ 387, subd. (b); Cal. Rules of Court, rule 5.565(e)(1).) If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. ([Cal. Rules of Court, r]ule 5.565(e)(2); *In re H.G.* (2006) 146 Cal.App.4th 1, 11.) A section 387 petition need not allege any new jurisdictional facts or urge different or additional grounds for dependency because a basis for juvenile court jurisdiction already exists. [Citations.] The only fact necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child. [Citations.]” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161.)

“We review the court's jurisdictional and dispositional findings for substantial evidence. [Citations.] . . . We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the juvenile court's order

and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*In re T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162.)

We presume the juvenile court’s findings and orders to be correct (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576) and will be affirmed on appeal “regardless of the correctness of the grounds upon which the court reached its conclusion.” (*In re Carmen O.* (1994) 28 Cal.App.4th 908, 921-922.)

*A. Sufficient Evidence to Sustain the Section 387 Supplemental Petition*

The parents claim there was insufficient evidence that the minor’s prior disposition was not effective or that there was a current risk to the minor based on the March 2017 domestic violence incident. We disagree.

Here, the supplemental petition alleged the previous disposition had been ineffective in protecting the minor because the parents’ continued use of marijuana and their failure to drug test as directed placed the minor at risk. Despite the parents’ claims that they only smoked once a week, the evidence showed both parents used significant amounts of marijuana despite being unable to produce valid medical marijuana cards. According to E.S., both parents smoked marijuana in the garage and mother made marijuana cookies in the home. There were plants found in an upstairs bathroom in addition to those growing in the garage. Department staff noted the home smelled strongly of marijuana. The number of marijuana plants found was twice that of what the parents admitted to and staff found dubious the parents’ claim that the marijuana was for personal use only and not for sale. Indeed, the parents’ personal stash consisted of a gallon-sized bag which was approximately three quarters full of marijuana. The fact that the parents had a sophisticated video surveillance system demonstrates further the risk to the minor and other occupants of the home due to the presence of the marijuana grow.

The parents' marijuana use and production clearly impacted their ability to safely and reliably parent the minor and his sibling, as evidenced in part by the fact that E.S. was unable to wake both parents despite trying for over an hour. While the parents eventually drug tested negative for all substances, neither parent completed an AOD or drug tested despite repeated directions to do so until the end of May 2017. While mother produced numerous negative tests following discovery of the marijuana grow, she struggled to secure an alternative means to address her chronic pain, leaving her vulnerable to future use of marijuana. She also failed to understand the dangers of using marijuana in conjunction with her psychotropic medication. Father tested only twice after discovery of the marijuana grow in the home, oftentimes refusing to test and in so doing revealing his rejection of the notion that drug testing was important for reunification. Finally, the discovery of the marijuana grow resulted in the parents' expulsion from the home and subsequent homelessness for mother, placing the minor at further risk if not otherwise placed with his caretakers.

The parents contend their use and production of marijuana was insufficient, in and of itself, to sustain the section 387 supplemental petition. We need not reach the point as the supplemental petition also alleged the previous disposition had been ineffective in protecting the minor based on the March 29, 2017, domestic violence incident. The evidence showed a history of domestic violence involving one or both parents beginning as early as 2005. The sustained allegations in the original dependency petition revealed that the continuing domestic violence between the parents continued to place the minor at risk when, during an argument between the parents, mother threw a pair of scissors at father and the scissors struck the minor in the forehead.

After months of comprehensive reunification services, including services focused on domestic violence and anger management, and just three months after return of the minor to the parents' custody and care, the parents again engaged in domestic violence wherein father pushed mother, ripped the car keys from her hand, and ran over her foot

with the car. As father readily admitted, the March 2017 incident was “the same scenario as what happened in approximately 2015.” Despite that admission and the parents’ acknowledgement of their troubled relationship, both parents continuously and steadfastly denied any domestic violence and claimed they adequately protected the minor by removing him from the home prior to engaging in the March 2017 incident.

The evidence also showed that, despite the parents’ repeated denials about being in a romantic relationship and living together, father was present in mother’s home during mother’s visits with the minor, mother and father were observed leaving the courthouse separately but eventually uniting and driving away in the same vehicle, and father seemed to know mother’s work schedule and whereabouts in great detail despite the parents’ assertions that they only communicated for purposes of co-parenting. These facts give rise to a strong inference that the parents were indeed spending time together despite their claims to the contrary, thus placing the minor at risk of future incidents of domestic violence.

Finally, both parents spend a significant amount of time arguing that the services they received were insufficient. It is worth noting the parents raised no such objection prior to return of the minor to their custody in December 2016 after having received eight months of services, or in March 2017 when the minor was removed a second time, at which point the parents had already received nearly a year’s worth of services for reunification with the minor who was under the age of three. (§§ 361.5, subd. (a)(1)(B) & 366.21, subd. (e).) The fact that the case was ultimately continued to 18 months did not create a new right for additional statutory services for the parents. As discussed more fully below, both parents failed to benefit from those services, and failed to fully avail themselves of the additional services provided to them after March 2017.

These facts, taken together, provide sufficient evidence to support the court’s finding that the minor’s previous disposition was not effective and that there was a

current risk to the minor based on the March 2017 domestic violence incident. The juvenile court did not err in sustaining the section 387 supplemental petition.

*B. Denial of Father's Request for Continuance Pursuant to Section 352*

Father contends the court abused its discretion in denying his request to continue the hearing in order to provide him with additional services beyond the 18-month period.

Section 352 provides that, upon a parent's request, "the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that a continuance shall not be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (§ 352, subd. (a)(1).) Subdivision (a)(2) of that section provides that continuances "shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance."

We review the juvenile court's denial of the requested continuance for an abuse of discretion. (*In re Z.S.* (2015) 235 Cal.App.4th 754, 773.)

The record supports the juvenile court's decision to deny father's request for continuance. The contested jurisdiction/disposition hearing on the supplemental petition commenced on August 30, 2017, and continued with several days of testimony, culminating in closing arguments from counsel on September 7, 2017, and the court's ruling on September 15, 2017. It was not until closing argument after the evidentiary phase of the jurisdiction/disposition hearing that father's counsel interjected an argument for a continuance. First, counsel argued that, if the court were to remove the minor from the parents, "I am asking that the Court order continued reunification services finding that there are exceptional circumstances that exist to support continued reunification

services.” “I am asking for continued reunification services under[] Section 352.” Counsel argued that, since the filing of the supplemental petition and the March 23, 2017, hearing wherein the court ordered the minor to remain in the parents’ home and the parents to receive family maintenance services, the social worker failed to refer the parents to services “until June of 2017,” the referrals “didn’t comprehensively delineate what the purposes of those services were, such as domestic violence between the parents,” and the Department failed to make a good faith effort to provide meaningful family maintenance services to the parents despite the court’s order to do so. Based on those assertions, counsel argued as follows: “[T]he father’s first request is to dismiss the [section] 387 petition. If the Court sustains some or all of that language in the supplemental petition, I could not believe that there is clear and convincing evidence to remove him from the father’s care. [¶] If the Court does remove him from the father’s care and have [the minor] remain with the [maternal aunt and uncle], then I am asking for continued reunification services under[] Section 352.”

The court sustained the supplemental petition, ordered the minor removed from the parents, terminated reunification services, and set the matter for a section 366.26 hearing, finding there was no good cause to continue under section 352. In particular, the court stated that because 18 months had passed since the minor was first removed, the parents were “timed out from reunification[] services unless there is good cause to continue reunification services.” Noting the admonishment in section 352, subdivision (a) against a continuance when such a continuance would be contrary to the interests of the minor, and noting its previous finding that further domestic violence services would not be of value to the parents, the court concluded there was no good cause to continue reunification services.

To the extent father was seeking to continue the dispositional hearing on the supplemental petition “beyond the time limit within which the hearing is otherwise required to be held” (§ 352, subd. (a)(1)), his request was untimely. Father made his

request to continue during closing argument in the jurisdictional/dispositional hearing. That, in and of itself, was sufficient cause to deny a continuance. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605.)

Even assuming father's request was timely, the juvenile court did not abuse its discretion in determining father failed to make a showing of good cause or demonstrate a continuance would not be contrary to the minor's best interests. Father claims he provided the court with good cause because reasonable services had not been provided to him following the filing of the section 387 supplemental petition. The claim is untenable. As the court noted, more than 18 months had passed since the minor was initially removed from the parents' care in December 2015. An extension of reunification services under these unusual circumstances would require a showing of good cause (see *In re J.E.* (2016) 3 Cal.App.5th 557, 566-567), particularly here where the minor was under the age of three. The minor was initially placed with the maternal aunt and uncle for eight months prior to being returned to the parents' home, where he resided for just three months before a domestic violence incident between the parents resulted in his return to the home of the maternal aunt and uncle for the remainder of the dependency proceedings. Despite the fact that the parents had already received in excess of 12 months of services, staff and service providers concluded they benefitted little from those services, particularly with respect to the issue of domestic violence, and would not benefit from additional services. One of the court's considerations in deciding whether to exercise its discretion to continue the hearing is " 'the likelihood of success of further reunification services.' " (*In re J.E., supra*, 3 Cal.App.5th at p. 567; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1779.) The evidence demonstrated there was little if any likelihood of success if further services were provided to the parents.

The parents' failure to make significant progress regarding the domestic violence issue in particular, coupled with evidence suggesting the parents "continued embroilment in each other's lives" and lingering issues regarding the parents' use of marijuana and

father's repeated refusal to drug test, placed the minor at risk of future domestic violence between the parents. In light of those facts, the court properly concluded there was no cause to continue the hearing.

The juvenile court did not err in sustaining the section 387 supplemental petition.

## II

### *Denial of Mother's Section 388 Petition*

Mother contends the juvenile court abused its discretion in denying her section 388 petition seeking return of the minor to her custody. She claims there was sufficient evidence of changed circumstances and that the requested change would be in the minor's best interests.

A petition to modify a juvenile court order under section 388 must allege facts showing that new evidence or changed circumstances exist, and that changing the order will serve the child's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).) In assessing the petition, the juvenile court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189.)

We review the denial of a section 388 petition after an evidentiary hearing for abuse of discretion (*In re S.R.* (2009) 173 Cal.App.4th 864, 870), reversing only if under all the evidence, including reasonable inferences from the evidence and viewed most favorably to the ruling, no reasonable judge could have made that ruling. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) If there is a conflict in the evidence, we reverse only if the evidence compels a finding for the appellant as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

Mother's section 388 petition argued that, following the court's September 15, 2017, order removing the minor from her custody, terminating reunification services, and setting the section 366.26 hearing, mother continued to make significant progress in

addressing the issues that led to the minor's removal by paying for and completing additional courses in anger management and domestic violence, managing her pain without the use of marijuana, being evaluated and assessed as not having a substance abuse problem, demonstrating job stability, obtaining safe and appropriate housing suitable for the minor, continuing weekly visits with the minor, and demonstrating good parenting skills. Mother's petition requested that the court return the minor to her custody under the Department's supervision and vacate the section 366.26 hearing.

The juvenile court found the circumstances did not amount to changed circumstances. We agree. The evidence demonstrated that, at best, mother's circumstances were changing. Although she was participating in online anger management and domestic violence courses, she was still unable or unwilling to acknowledge the domestic violence in her relationship with father, the impact the domestic violence had on the minor and his sibling, or that the minor's removal was due in large part to the ongoing domestic violence between the parents. Further, mother's mental health and medication compliance continued to be a concern for Dr. Nelson and social worker Rainey, as well as father. While that evidence was sufficient to demonstrate the lack of changed circumstances, the lingering concerns regarding mother's relationship with father and whether, despite her negative drug tests, she would resume her use of marijuana to address her chronic and ongoing pain were also relevant to that determination.

Mother contends return of the minor to her custody was in the minor's best interest because she underwent substantial changes and was a fit parent and ready to care for the minor; her bond with the minor was as strong as the minor's bond with his caretakers; she had an interest in maintaining her family integrity; and it was important to maintain the bond between the minor and his sibling, E.S. We are not persuaded.

As previously discussed, while mother had indeed undergone some changes (e.g., regularly testing negative for marijuana), there were some issues that still caused serious

concern regarding her ability to safely and properly care for the minor (e.g., her denial of the domestic violence, her ability to manage her ongoing chronic pain, her willingness to continue treatment for her mental health issues) and there was still significant work to be done in order to eliminate potential or actual risk to the minor.

The juvenile court did not abuse its discretion in denying mother's section 388 petition.

#### DISPOSITION

The juvenile court's orders are affirmed.

\_\_\_\_\_HULL\_\_\_\_\_, J.

We concur:

\_\_\_\_\_RAYE\_\_\_\_\_, P. J.

\_\_\_\_\_HOCH\_\_\_\_\_, J.